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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/978,475

10/16/2001

Kenneth Rose

M-11446 US

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33031

7590

09/20/2006

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EXAMINER

TANG, KAREN C

ART UNIT

PAPER NUMBER

2151

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/978,475	Applicant(s) ROSE ET AL.	
	Examiner Karen C. Tang	Art Unit 2151	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-29.

Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

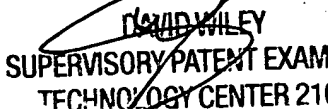
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____


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SUPERVISORY PATENT EXAMINER
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Continuation of 11. does NOT place the application in condition for allowance because: Regarding with the argument made on the independent claims 1 and 18 where there is no suggestion/motivation to combine or the suggestion/motivation was not being understood. Examiner respectfully traversed the argument - First, the cited portion, where "The suggestion/motivation would NOT have been obvious", Examiner has reviewed the Final Action which filed 5/31/06, where the suggestion/motivation statement on the argumentable Claims 1 and 18, did not indicate "the suggestion/motivation would NOT...". Second, to clarify the motivation statement, it basically indicate by prioritize the flows, it is easier to maintain the throughput of the system, and also, it can reducing the process time while prioritize the data by for example, sending the urgent data (prioritize data) first.

Regarding with Claims 6 and 23, Applicants indicates the cited portions did not reads on the claimed limitation. Examiner respectfully traversed the argument. When "comparing the first data quantity value to a plurality of predetermined valued". Threshold T1 is made out of plurality of predetermined values such as (R4, r13, r24, and r34) so the first data quantity such as the "stored bytes" in each of the buffer, is being compared to the "plurality of predetermined values" T1. When the comparison is made, the rate controller will response in response to the comparison results (refer to Col 6, Lines 40-67 and Col 5, Lines 25-55)

Regarding with Claims 7 and 15, the cited portion indicated the result once the comparison is made between the first data quantity value and second data quantity value, also refer to Col 6, Lines 40-67

Regarding with Claim 8, the art of record clearly indicate the total network traffic output count R is subtracted from the input count r14 +r24 +r34. The claim language did not expressly indicate the total input/output count is not a rate count, thus, is being interprets as the rate count.

Regarding the arguments made on Claims 1-29, Applicant made arguments attacking Kalkunte along, Examiner respectfully traversed the arguments where the rejections is made of combination of the references of Kalkunte and Wynne, and since the arts of record is analagous and is combinatable, one cannot show nonobviousness by attacking references individually where the rejections are based on combination of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding with Argument made on depending Claim 3, which, "there is no transmitting devices, a node, contained in the switching fabric. Examiner respectfully traversed the rejection. The way Examiner interprets the claim language is, there is a transmitting component/device, which permits switching fabric to perform transmission capability. Therefore, the art on the record still reads on the limitations. .